

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

SETH MICHAEL KASEL,

Plaintiff,

v.

CASE NO. 17-3077-SAC

**STATE OF KANSAS,
ATTORNEY GENERAL OF
KANSAS,**

Defendants.

MEMORANDUM AND ORDER

This case comes before the Court on Petitioner Seth Michael Kasel's Petition for writ of habeas corpus under 28 U.S.C. § 2254. On June 16, 2017, the Court entered a Memorandum and Order (Doc. 3) granting Petitioner twenty days from the date of the Order to show cause why this matter should not be dismissed for lack of subject matter jurisdiction and as barred by the exhaustion requirement and the limitation period. The Order states that "[t]he failure to file a response may result in the dismissal of this matter without additional prior notice." (Doc. 3, at 15.) Petitioner has failed to file a response within the allowed time, and the Petition is dismissed.

Rule 11 of the Rules Governing Section 2254 Cases requires a district court to issue or deny a certificate of appealability ("COA") upon entering a final adverse order. A COA may issue only if the petitioner made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). "When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a

valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The failure to satisfy either prong requires the denial of a COA. *Id.* at 485. The Court finds nothing in the present record that suggests its ruling is debatable or an incorrect application of the law and therefore declines to issue a certificate of appealability.

IT IS THEREFORE BY THE COURT ORDERED that this Petition seeking relief under 28 U.S.C. § 2254 is **dismissed**.

IT IS SO ORDERED.

Dated this 11th day of July, 2017, at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U. S. Senior District Judge